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11 **UNITED STATES BANKRUPTCY COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA**

13 **SANTA ANA DIVISION**

14 In re

15 Taquiero Taco LLC,

16 Debtor,

Case No. 8:23-bk-10475-TA

Chapter 7

**STIPULATION RE: DISPOSITION OF U.S.
SMALL BUSINESS ADMINISTRATION
COLLATERAL**

No Hearing Required

19 **TO THE HONORABLE THEODOR ALBERT, CHIEF UNITED STATES**
20 **BANKRUPTCY JUDGE:**

21 **IT IS HEREBY STIPULATED AND AGREED** between the UNITED STATES OF
22 AMERICA, on behalf of its agency, the U.S. SMALL BUSINESS ADMINISTRATION (“SBA”)
23 through its counsel of record, and RICHARD A. MARSHACK, the duly appointed, qualified and
24 acting Chapter 7 trustee (“Trustee,” collectively with the SBA, the “Parties”) of the bankruptcy estate
25 (“Estate”) of Taquiero Taco LLC (“Debtor”) in the above-captioned case (“Case”) as follows:

26 **RECITALS**

27 A. The Debtor filed a voluntary Chapter 7 bankruptcy petition on March 8, 2023 (the
28 “Petition Date”), commencing the Case.

1 B. Pre-petition, on or about May 22, 2020, SBA issued to the Debtor a secured Economic
2 Injury Disaster Loan in the principal amount of \$150,000.00 (the “SBA Loan”). The SBA Loan is
3 evidenced by a promissory note, which, among other things, empowers SBA to take possession of any
4 collateral that secures the SBA Loan, or to sell, lease, or otherwise dispose of any collateral that secures
5 the Loan at public or private sale, with or without advertisement.

6 C. The SBA Loan is also evidenced by a Security Agreement executed on or about May 22,
7 2020, and a UCC-1 Financing Statement validly filed on May 28, 2020, with the California Secretary of
8 State as Filing Number 207782514440 (“SBA Lien”). The SBA Loan is secured by all of the Debtor’s
9 tangible and intangible personal property, including, but not limited to: (a) inventory, (b) equipment, (c)
10 instruments, including promissory notes (d) chattel paper, including tangible chattel paper and
11 electronic chattel paper, (e) documents, (f) letter of credit rights, (g) accounts, including health-care
12 insurance receivables and credit card receivables, (h) deposit accounts, (i) commercial tort claims, (j)
13 general intangibles, including payment intangibles and software, and (k) as-extracted collateral as such
14 terms may from time to time be defined in the Uniform Commercial Code (collectively, the “Personal
15 Property Collateral”). The security interest includes all accessions, attachments, accessories, parts,
16 supplies and replacements for the Personal Property Collateral, all products, proceeds and collections
17 thereof and all records and data relating thereto.

18 D. Interest accrues on the SBA Loan at the rate of 3.75% per annum.

19 E. On or about October 5, 2021, the SBA Loan was modified and increased to the
20 cumulative principal amount of \$500,000.00.

21 F. As of the Petition Date, the Debtor owes SBA \$534,381.85 on account of the SBA Loan.

22 G. The Debtor is anticipating a tax overpayment from the Internal Revenue Service (“IRS”)
23 in the approximate amount of \$110,000 (the “Tax Overpayment”).

24 H. The amount of the Tax Overpayment is far less than the unpaid balance of the SBA Loan
25 secured by the SBA Lien. Accordingly, the Trustee and the SBA have agreed to allow the Trustee to
26 dispose of the Estate’s interest, if any in the Tax Overpayment, to the SBA, pursuant to 11 U.S.C
27 Section 725.
28

1 I. Therefore, the Parties stipulate that the Tax Overpayment shall no longer constitute an
2 asset of the Estate, and SBA may offset any IRS overpayment, including the Tax Overpayment.

3 **STIPULATION**

4 1. Recitals. The Recitals set forth above are incorporated herein by this reference and shall
5 be deemed a material part of the Stipulation.

6 2. Disposition of Collateral. Subject to the terms and conditions of this Stipulation, the
7 Trustee is authorized to dispose of the Tax Overpayment for the benefit of the SBA. Accordingly, SBA
8 shall assume legal title of the Tax Overpayment and the Tax Overpayment shall no longer constitute an
9 asset of the Estate. SBA may offset any IRS overpayment, including the Tax Overpayment.

10 3. Assignability, Binding Effect and Survival. This Stipulation shall inure to the benefit of
11 and shall be binding upon the Parties, their successors, and assigns. Trustee may not assign this
12 Stipulation without SBA's consent. To the extent that the SBA has the right to assign its rights to a third
13 party under the SBA Loan and related loan documents, SBA may assign this Stipulation to any assignee
14 to which it assigns its rights under the SBA Loan and related Security Agreement and UCC-1 Financing
15 Statement

16 4. Entire Agreement. This Stipulation contains all of the agreements between the Parties
17 and is intended to be and is the final and sole agreement between the Parties. The Parties agree that any
18 other prior or contemporaneous representations or understandings not explicitly contained in this
19 written agreement, whether written or oral, are of no further legal or equitable force or effect. Any
20 subsequent modifications to this Stipulation must be in writing and must be signed and executed by the
21 Parties.

22 5. Authority. The Parties to this Stipulation represent and warrant that each has reviewed
23 and understands its terms and contents. The Parties to this Stipulation further represent and warrant that
24 each has the power to execute, deliver, and perform this Stipulation; that each has taken all necessary
25 action to authorize the execution, delivery, and performance of this Stipulation; and that this Stipulation
26 is enforceable in accordance with its terms.

27 6. Representation by Counsel. The Parties do hereby acknowledge and agree that each has
28 been represented by, or had the opportunity to seek representation by, independent counsel of his or its

own choice throughout all negotiations that preceded the execution of this Stipulation. The Trustee represents and acknowledges that he enters into this Stipulation freely and voluntarily. The Trustee further acknowledges that he has had sufficient opportunity to consult with an attorney regarding the terms and conditions of this Stipulation.

7. Execution. It is contemplated that this Stipulation may be executed in several counterparts with a separate signature page for each Party. All such counterparts and signature pages, collectively, will be deemed to be one document.

8. Amendment. This Stipulation may be amended only by writing signed by or on behalf of the SBA and the Trustee.

9. Retention of Jurisdiction. This Court shall retain jurisdiction to enforce the terms of this Stipulation.

10. Fees. The Parties shall bear their own attorney's fees, costs and expenses in connection with this Stipulation.

IT IS SO STIPULATED.

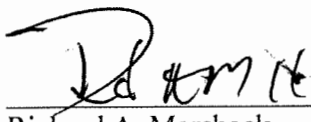
Respectfully submitted,

Dated: August 3, 2023

E. MARTIN ESTRADA
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Gil Hopenstand
GIL HOPENSTAND
Special Assistant United States Attorney
Attorneys for U.S. Small Business Administration

Date: August 3, 2023


Richard A. Marshack
Chapter 7 Trustee

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled (*specify*): **STIPULATION RE: DISPOSITION OF U.S. SMALL BUSINESS ADMINISTRATION COLLATERAL** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On August 4, 2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Parisa Fishback:** pfishback@fishbacklawgroup.com
- **Richard A. Marshack:** pkraus@marshackhays.com
- **Melissa Davis Lowe:** mlowe@shulmanbastian.com
- **Walter Pena:** walterp@bewleylaw.com
- **U.S. Trustee:** ustpreion16.sa.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On August 4, 2023 I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

JUDGE: Pursuant to the General Order 23-01, Judge's copies are not required for any document less than 25 pages.

DEBTOR: Taquiero Taco LLC, 21551 Archer Cir, Huntington Beach, CA 92648

Shulman Bastian Friedman & Bui LLP
100 Spectrum Center Dr Ste 600
Irvine, CA 92618

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on August 4, 2023 I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

N/A

☐ Service information continued on attached page


I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

August 4, 2023

Julie Morales

Date

Printed Name


Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.